

AMENDED IN ASSEMBLY MARCH 6, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

## ASSEMBLY BILL

**No. 363**

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**Introduced by Assembly Member Bauer-Kahan**

February 1, 2023

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An act to amend Section 12838 of the Food and Agricultural Code, relating to pesticides.

### LEGISLATIVE COUNSEL'S DIGEST

AB 363, as amended, Bauer-Kahan. Pesticides: neonicotinoids for nonagricultural use: reevaluation: ~~regulations~~. *control measures*.

Existing law generally regulates pesticide use by the Department of Pesticide Regulation, and requires the Director of Pesticide Regulation to endeavor to eliminate from use a pesticide that endangers the agricultural or nonagricultural environment. Existing law requires pesticides to be registered by the department, and requires that a pesticide be thoroughly evaluated prior to registration. Existing law provides for the continued evaluation of registered pesticides. Existing law requires the department, by July 1, 2018, to issue a determination with respect to its reevaluation of neonicotinoids and to adopt any control measures necessary to protect pollinator health within 2 years after making that determination. Existing law provides that every person who violates a provision of law or any regulation relating to pesticides is guilty of a misdemeanor and shall be punished by specified fines or by up to 6-months imprisonment, or both.

This bill would require the department, by July 1, 2024, ~~to publish a reevaluation of the latest science regarding the impacts of neonicotinoid pesticides, to issue a determination, taking into account the latest science, with respect to a reevaluation of neonicotinoids, as defined,~~

on pollinating insects, aquatic ecosystems, and human health when used for the nonagricultural protection of outdoor ornamental plants, trees, and turf, and, by July 1, 2026, to adopt ~~regulations governing control measures for~~ that use that are necessary to protect ~~the health of honeybees, native bees, and other~~ pollinating insects, aquatic ecosystems, and human health, as provided. The bill would require that the reevaluation consider the impacts to pollinating insects, aquatic ecosystems, and human health, including, except as provided, the cumulative impacts of exposure, which the bill would define for these purposes. ~~The bill would require the department to consult with the Office of Environmental Health Hazard Assessment (OEHHHA) in conducting its human health evaluation and to consider and adopt, or not adopt, all recommendations of OEHHHA, as provided.~~

By expanding the scope of a crime through the adoption of ~~regulations, control measures for the use of neonicotinoid pesticides~~, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 12838 of the Food and Agricultural Code
- 2 is amended to read:
- 3 12838. (a) On or before July 1, 2018, the department shall
- 4 issue a determination with respect to its reevaluation of
- 5 neonicotinoids.
- 6 (b) (1) Within two years after making the determination
- 7 specified in subdivision (a), the department shall adopt any control
- 8 measures necessary to protect pollinator health.
- 9 (2) If the department is unable to adopt the necessary control
- 10 measures within two years as required in paragraph (1), the
- 11 department shall submit a report to the appropriate committees of
- 12 the Legislature setting forth the reasons the requirement of
- 13 paragraph (1) has not been met.

1 (3) The department shall update the report submitted to the  
2 appropriate committees of the Legislature pursuant to paragraph  
3 (2) every year until the department adopts the necessary control  
4 measures specified in paragraph (1).

5 (c) (1) For purposes of this subdivision, “neonicotinoid  
6 pesticide” means a pesticide containing acetamiprid, clothianidin,  
7 dinotefuran, imidacloprid, thiamethoxam, or any other chemical  
8 designated by the department as belonging to the neonicotinoid  
9 class of chemicals.

10 (2) (A) On or before July 1, 2024, the department shall ~~publish~~  
11 ~~a reevaluation of the latest science regarding the impacts of~~  
12 ~~neonicotinoid pesticides when used for the protection of~~ *issue a*  
13 *determination, taking into account the latest science, with respect*  
14 *to a reevaluation of neonicotinoids when used on outdoor*  
15 *ornamental plants, trees, and turf.*

16 (B) All of the following apply to the reevaluation:

17 (i) The reevaluation shall consider the impacts of neonicotinoid  
18 pesticides ~~to~~ on pollinating insects, aquatic ecosystems, and human  
19 health.

20 (ii) In performing the reevaluation, the department shall consider  
21 the cumulative impacts of exposure to multiple neonicotinoid  
22 pesticides unless the department can demonstrate with substantial  
23 evidence that one or more neonicotinoid pesticides do not share a  
24 common mechanism of toxicity and do not present risk of  
25 cumulative harm. ~~“Cumulative~~ *For purposes of this subdivision,*  
26 *“cumulative impacts of exposure” means the impact of exposure*  
27 *to two or more neonicotinoid chemicals in the outdoor lawn or*  
28 *garden environment, aggregated with the impacts of exposure to*  
29 *any relevant neonicotinoid chemicals from sources other than lawn*  
30 *or garden products.*

31 ~~(iii) In conducting its human health evaluation pursuant to this~~  
32 ~~subdivision, the department shall consult with the Office of~~  
33 ~~Environmental Health Hazard Assessment (OEHHA). The~~  
34 ~~department shall consider all recommendations of OEHHA and~~  
35 ~~issue a public notice explaining the decision by the department to~~  
36 ~~adopt, or not adopt, each recommendation of OEHHA.~~

37 (iv)

38 (iii) The department is not required to conduct a reevaluation  
39 of any use of neonicotinoid pesticides for the protection of

1 agricultural commodities, as defined in Section 6000 of Title 3 of  
2 the California Code of Regulations.

3 (3) On or before July 1, 2026, the department shall adopt  
4 ~~regulations governing the nonagricultural control measures for~~  
5 ~~the use of neonicotinoid pesticides, as specified in paragraph (2),~~  
6 ~~pesticides on outdoor ornamental plants, trees, and turf~~ that are  
7 necessary to protect all of the following:

8 (A) ~~The health of honeybees, native bees, and other pollinating~~  
9 ~~insects, Pollinating insects, including honeybees and native bees,~~  
10 taking into account all relevant routes of exposure, including  
11 exposure to contaminated pollen, nectar, soil, and water.

12 (B) Aquatic ecosystems, taking into account contamination of  
13 surface or ground water.

14 (C) Human health, taking into account ~~aggregate~~ *the cumulative*  
15 exposure of people to neonicotinoid pesticides from all sources.

16 SEC. 2. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.